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Appeal from Circuit Court, Lee County.

Proceedings between A. F. Litton and J. T. Flanary and another, as regards a judicial sale. From a decree ordering a resale, said Litton appeals. Reversed and remanded, with instructions.

R. T. Irvine, of Big Stone Gap, and *Pennington Bros.*, of Pennington Gap, for appellant.

J. W. Orr and *B. H. Sewell*, both of Jonesville, for appellees.

JOHNSTON v. JOHNSTON.

Sept. 7, 1914.

[82 S. E. 694.]

1. **Divorce (§ 49*)—Condonation.**—Acts of infidelity of a husband, occurring and being known to the wife long before their marital relations are broken off, are condoned.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 171-179; Dec. Dig. § 49.* 4 Va.-W. Va. Enc. Dig. 742.]

2. **Appeal and Error (§ 1027*)—Harmless Error.**—One cannot complain of refusal to delay the trial to allow the retaking of depositions as to matter which could not affect the result of the suit.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4033; Dec. Dig. § 1027.* 1 Va.-W. Va. Enc. Dig. 582.]

Appeal from Circuit Court, Giles County.

Suit by J. Raleigh Johnston against Nona Johnston. From a decree granting divorce, defendant appeals. Affirmed.

Hugh G. Woods, of Princeton, for appellant.

W. B. Snidow, of Pearisburg, for appellee.

DENNIS et al. v. DENNIS et al.

Sept. 7, 1914.

[82 S. E. 696.]

1. **Partition (§ 9*)—By Act of the Parties—Parol Partition.**—A parol partition of land, owned by a mother and son as tenants in common, by which the son was to receive three-fifths instead of one-half of the land, could not be enforced after the mother's death, where no survey was made or fence erected to indicate the line, and it did not satisfactorily appear that a line was agreed upon so partitioning the land.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 26-32; Dec. Dig. § 9.* 10 Va.-W. Va. Enc. Dig. 771-2.]

2. Partition (§ 78*)—Mode of Partition—Sale for Division of Proceeds.—A mother, who with a son owned a tract of land as tenants in common, died leaving six children as her heirs at law. The land could be equally divided into two parts without damage or disadvantage to the value of either interest, but was not susceptible of division among the mother's heirs. Held, that it was error to decree a sale of the whole tract for division, and that one half of the tract should be allotted to the son and the other half sold for division among the heirs, including the son as one of the heirs.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 265-273; Dec. Dig. § 78.* 10 Va.-W. Va. Enc. Dig. 791.]

3. Partition (§ 78*)—Mode of Division—Allotting Improvements.—Where a son owned a tract of land as tenant in common with his mother, and took possession of the western portion of the land with his mother's consent, built upon it, and otherwise improved it and made his home thereon, upon a partition of the land between such son and the heirs of the mother, the part upon which the improvements had been made should be allotted to the son.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 265-273; Dec. Dig. § 78.* 10 Va.-W. Va. Enc. Dig. 784, 788.]

Appeal from Circuit Court, Bedford County.

Suit for partition by one Dennis and others against other parties of the same name. From the decree, certain parties appeal. Reversed and remanded.

Hunter Miller and *S. S. Lambeth, Jr.*, both of Bedford City, for appellants.

R. W. Withers, of Lexington, and *S. V. Kemp*, of Lynchburg, for appellees.

SHELTON *v.* TAYLOR'S COMMITTEE et al.

Sept. 7, 1914.

[82 S. E. 698.]

1. Insane Persons (§ 91*)—Action against Committee—Jurisdiction—Foreign Attachment.—Where a nonresident was appointed and qualified as the committee of an insane person in Virginia and removed the lunatic to the committee's home in Washington, D. C., a bill in equity in the nature of a foreign attachment was maintainable against the committee in Virginia on a claim against the luna-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.